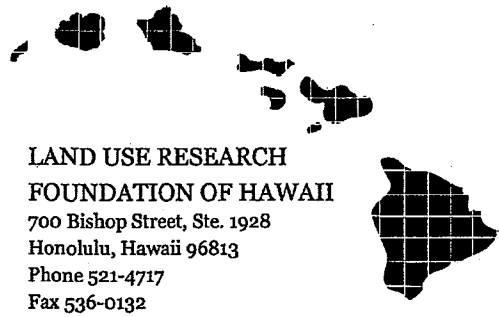


LURF



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Senate Committee on Energy and Environment
Hearing Date: Tuesday, February 3, 2009, 2:45 p.m. in CR 225

Testimony in Opposition SB 1338 – Relating to Household Energy Demand (Clothesline Bill)

Honorable Chair Mike Gabbard, Vice-Chair J. Kalani English and
Energy and Environment Committee Members:

My name is David Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF’s missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii’s significant natural and cultural resources and public health and safety.

LURF and its members support the intent of this bill and recognize the importance of reducing the use of fossil fuels and voluntarily support renewable energy - in fact many of LURF’s members install energy efficient appliances and include other renewable energy devices in the housing units they produce. Notwithstanding those facts, however, this bill is not the answer to significant reduction in energy consumption. SB 1338 would result in an unnecessary prohibition and mandate, as many developments and homeowner associations already allow clotheslines; it may alter the existing and contractual terms and expectations of existing residents; it could result in the criminal prosecution of homeowner association board members; laundry hanging in plain view will impact aesthetics and decrease property values; and its terms are vague, ambiguous and subject to dispute and litigation. Thus, LURF must testify **in opposition to the current version of SB 1338.**

SB 1338. Despite the fact that many existing developments and master planned communities allow clotheslines with certain restrictions, the purpose of this bill is to mandate a state-wide change in some existing contracts, agreements and rules, by prohibiting real estate contracts, agreements, and rules from precluding or rendering ineffective, the use of clotheslines on the premises of single-family dwellings and multi-family townhouse developments. This proposal unfairly changes the current rules and regulations of private home associations, which are in place to protect property values and aesthetics for the good of the whole development.

This bill also includes the following vague and ambiguous provision, which provides that “...the board of directors.....may implement “reasonable restrictions” with regard to clotheslines, provided that the restrictions do not prohibit the use of clotheslines altogether. “ (emphasis added). This provision could lead to unnecessary disputes and litigation as to the “reasonableness” of any restrictions imposed by a board.

LURF’s Position. LURF opposes SB 1338, based on the following concerns:

- **Unnecessary prohibition and mandate.** This bill is an unnecessary prohibition and mandate, as many of the established communities already have existing Design Covenants, Codes and Restrictions (DCCRs) in place which allow clotheslines, as long as the hanging laundry is not within the view of neighbors or the public. Many existing developments and master-planned communities with single-family dwellings and multi-family townhouse developments which have been in existence for many years, have rules and regulations which allow clotheslines with some restrictions - - these restrictions recognize that the homes in the community were purchased by owners seeking a well-planned community that had rules that would protect their property values by maintaining the aesthetics around their property and ensure peace, health, comfort, safety and general welfare of the owners and their family members.
- **Issues relating to alleged “unreasonably restrictive clothesline regulations,” should be resolved through the mediation or arbitration provisions of DCCRs, and not through a state-wide statute? Does the number of homes affected warrant a statewide statute?** The text of the bill includes a claim that “many homeowners’ associations prohibit the use of clotheslines or render them ineffective through unreasonably restrictive regulation” – What homeowner associations? What are the unreasonably restrictive regulations? How many homes are we talking about? Do the true facts warrant a statewide prohibition and mandate? Aren’t there arbitration and mediation provisions in the DCCRs to address any “unreasonably restrictive” regulations? Again, does this situation really warrant a statewide prohibition and mandate which would change existing contracts, reduce property values and result in litigation?
- **How will this proposed mandate be administered or monitored? What are the penalties for violation? Will the boards of community associations be subject to criminal prosecution?** The proposed legislation does not include an enforcement provision – thus, there are several important unanswered questions - - Who decides what is an “unreasonable restriction” under the new law– a criminal judge? Will there be a sliding scale of what is an “unreasonable restriction,” depending on the type of community or housing complex, or the location of the clothesline (say next to a golf course hosting a nationally televised tournament)? Does the proposed law anticipate the criminal prosecution of board of directors who believe they have crafted DCCRs which allow clotheslines with reasonable restrictions? Will homeowner associations need to hire attorneys to draft clothesline rules and regulations and attorneys to provide a criminal defense for board members?
- **Alteration of existing contractual terms and homeowner expectations.** The bill seeks to change the terms and conditions of the DCCRs of planned community associations – many of which banned clotheslines and hanging laundry in plain view of neighbors and the general public. These aesthetics and DCCRs were relied on by buyers and made a part of the deeds for

those properties. The new law would alter these contractual terms – make clotheslines and hanging of laundry allowable anywhere – except that the board could impose “reasonable restrictions”;

- **Adverse impact on aesthetics and decrease in property values.** This bill could adversely affect aesthetics and decrease property values, by allowing hanging laundry in plain view throughout a development. It is important to realize that the reason many homeowners buy into planned communities are because DCCRs are in place to regulate and ensure proper uses for the good of the whole; and
- **Disputes and litigation.** The provision allowing Board of Directors to determine what type of clotheslines would be allowed, could open the door to disputes by residents who challenge the “reasonableness” of the regulations, or by residents who fail to conform with clothesline guidelines implemented by the board. This bill may also trigger other internal conflicts between home associations and homeowners and could lead to **unnecessary litigation** among homeowners and community associations.

Conclusion. While we support energy efficiency, the reduction of fossil fuels and the voluntary implementation of renewable energy, we must recommend that this bill be **held**, because it is an unnecessary prohibition and mandate, in light of the fact that many homeowner associations already allow clotheslines; the proposed bill may alter the existing and contractual terms and expectations of buyers in planned communities; it could subject homeowner association board members to criminal prosecution if their rules or regulations relating to clotheslines were found to be “unreasonable;” it would adversely impact aesthetics and decrease property values; and the term “unreasonable restriction” is vague, ambiguous and subject to dispute and litigation. Instead of passing a bill with such a prohibition and mandate - - we would recommend that more incentives be implemented that encourage renewable energy installations that would reduce the consumption of fossil fuel generated electricity.

Thank you for this opportunity to testify on this matter.



Mililani Town Association

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January 31, 2009

Senator Mike Gabbard, Chair
Senator J. Kalani English, Vice-Chair
Committee on Energy and Environment
State Capitol
Honolulu, HI 96813

VIA E-Mail: ENE_Testimony@Capitol.hawaii.gov

Re: S.B. No. 1338 – Relating to Household Energy Demand
Hearing: Tuesday, February 3, 2009, 2:45 pm, Conf Room 225

Dear Senators Gabbard, English and Committee Members:

My name is Eric Matsumoto, Vice-President of the Mililani Town Association (MTA). I have served in MTA leadership capacities for 24 of the last 30 years serving on the board. MTA encompasses 16,000 plus units involving both single family units and townhouse projects.

We strongly support this bill's intent and language to allow those members of planned communities and townhouses who desire to use clotheslines for drying clothes where otherwise would not be permitted, while at the same time allowing for the associations of planned communities and townhouses to have the ability to provide reasonable restrictions. This bill provides a win-win situation for both homeowners desiring to dry clothes outside and the associations covered.

It should be noted that, in its governing documents, MTA does permit homeowners to erect clotheslines, which were in the past erected by the developer as a matter of the development plan for each unit until approximately the 1970's. They were effective in drying clothes, but unfortunately, the practice ceased when homeowners began to rely primarily on electric clothes dryers.

As we now face the need to increase the use of green energy resources, this bill would help promote making a full circle in using the sun's energy to dry clothes.

We accordingly request this bill be passed.

Sincerely yours,

Eric M. Matsumoto
Vice-President, Board of Directors

Cc: Senator Kidani
Senator Bunda
Representative Lee
Representative Yamane